

BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

In the Matter of:)	
)	
Opinion Requested by:)	No. 76-085
William Thomas, Assemblyman)	Feb. 1, 1977
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BY THE COMMISSION: We have been asked the following question by Assemblyman William Thomas:

Is a legislator required to disclose the receipt of a parking pass from the California Museum of Science and Industry on his Statement of Economic Interests?

CONCLUSION

A legislator is not required to disclose the receipt of a parking pass from the California Museum of Science and Industry on his Statement of Economic Interests when the pass is issued and used exclusively in connection with his attendance at legislative committee meetings conducted at the Museum.

ANALYSIS

In the past, numerous legislative committee meetings have been held at the state building in Los Angeles. However, the demolition of that building has necessitated removal of these meetings to the California Museum of Science and Industry. In connection with this change of meeting sites, the Museum has issued parking passes to legislators for use while attending legislative meetings conducted at the Museum. The question before us is whether receipt of such a parking pass must be disclosed as a gift on the legislator's Statement of Economic Interests.

Government Code Section 87207(a)^{1/} requires legislators to disclose gifts with a value of \$25.00 or more on their Statement of Economic Interests. In an opinion requested

^{1/} All statutory references are to the Government Code unless otherwise noted.

by Kenneth Cory, Controller of the State of California, 1 FPFC Opinions 99 (No. 75-047, August 7, 1975), we concluded that a parking pass given to him by the governmental affairs office of the California State Universities and Colleges was a reportable gift if its value equaled \$25.00 or more. However, in that opinion we did not consider the effect of Section 82030(b)(2), which excludes certain types of payments from state agencies from the definition of income and thereby eliminates the need to disclose such payments on Statements of Economic Interests. We conclude today that our failure to consider the effect of Section 82030(b)(2) in the Cory opinion produced an erroneous result and we, therefore, overrule the Cory opinion.

Section 82030(b)(2) provides that income does not include "salary and reimbursement for expenses or per diem received from a state or local government agency...." In the instant case, the parking pass has been issued by a state agency to a state employee for use only while on official state business. The limitation to situations involving official state business is made clear on the face of the pass and by the letter accompanying the pass, which states that "the attached parking pass is to facilitate your entrance to the parking area for [legislative] meetings as well as to provide necessary security."

It is clear that Assemblyman Thomas would be entitled to receive reimbursement for parking expenses incurred in connection with legislative committee meetings. In the case of legislative meetings at the Museum, the State, instead, has given him a parking pass. Although this pass is more like an advance than a "reimbursement for expenses," we think that it nevertheless is excluded from the definition of income by Section 82030(b)(2).

The obvious purpose of Section 82030(b)(2) is to exclude from reportable income certain payments received by the filer in connection with expenses incurred as a result of the performance of his official duties. In light of this purpose, it would be anomalous to exclude retroactive payments but to include prospective payments related to the same type of expense. Accordingly, we conclude that the parking pass in question, and similar passes issued by other state agencies for use while on official business, are covered by the exclusion contained in Section 82030(b)(2) and that Assemblyman Thomas, therefore, need not disclose the receipt of the pass on his Statement of Economic Interests.

Our conclusion herein is limited to parking passes issued by public agencies and used only for official business. If an official receives a pass for use while on official business and also uses it for personal purposes unrelated to his official duties, he then will have received a gift.^{2/} Admittedly this gift will not have been made by the "donor" state agency with the type of donative intent which is an element of common law gifts. See Blonde v. Estate of Jenkins, 131 Cal. App. 2d 682, 685 (1955). We nevertheless think that under the Political Reform Act a gift will have been made because the recipient official will have received something of value for which he did not provide equal or greater consideration (Sections 82028, 82044), and to which the exemption from the definition of income in Section 82030(b)(2) is not applicable. The value of the gift will be determined by the value derived from the use of the pass for personal purposes and the gift will be reportable if its value is \$25.00 or more.

Approved by the Commission on February 1, 1977.
Concurring: Carpenter, Lapan, Lowenstein and Quinn.


Daniel H. Lowenstein
Chairman

^{2/} We do not mean to intimate that Assemblyman Thomas has used his parking pass for personal purposes unrelated to his official duties and include this admonition in our opinion only for purposes of clarification.